

## APPEAL NO. 010224

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 12, 2001, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable left little finger fracture injury on \_\_\_\_\_, and that because his injury is not compensable, he did not have disability. The claimant appeals, asserting that his evidence established that after breaking his little finger breaking up a barroom fight on July 16, 2000, he reinjured the finger at work on \_\_\_\_\_. The respondent (carrier) urges in response the sufficiency of the evidence to support the challenged determination.

### DECISION

Affirmed.

The claimant testified that in the early morning hours of Sunday, July 16, 2000, his left little finger was fractured by a pool cue in a barroom fight; that this injury was treated that day at a hospital emergency room (ER); that he worked on July 17, 18, 19, and 20, 2000, assisting with the installation of electrical line conduit in a ceiling at another hospital; that he was initially assisted by coworkers so he need not use his left hand but that these helpers were eventually reassigned; and that while working on \_\_\_\_\_, a piece of pipe fell from the ceiling, he grabbed it with his left hand, felt excruciating pain, and "rebroke [his] finger." Following this incident, the claimant went to another hospital where the fracture, which was a 100% break in the bone with dorsal overriding, was fully reduced. He said that his treating doctor, Dr. G, told him that the fracture had not healed before the second break, and that he has been off work since the \_\_\_\_\_ injury because Dr. G does not want him to reinjure the finger. Dr. G wrote on October 13, 2000, that the injury should be covered by workers' compensation insurance because the claimant's \_\_\_\_\_ injury appears to have aggravated or reinjured a preexisting fracture. Dr. J, an orthopedic surgeon who reviewed the medical records and x-rays for the carrier, testified that the fracture was not reduced at the ER on July 16; that there was no change in the fracture between July 16 and \_\_\_\_\_; that there was no new fracture or "re-break"; that the fracture would not have healed between July 16 and 20; and that the fracture was not worsened after the \_\_\_\_\_ incident, although the claimant did experience pain.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance

Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)) and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Robert W. Potts  
Appeals Judge